STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ISMAEL NAVARRO,

Defendant-Appellant.

UNPUBLISHED
October 5, 2006

No. 262670
Wayne Circuit Court
LC No. 04-010899-01

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendant was convicted by a jury of one count of second-degree criminal sexual assault, MCL 750.520c(1)(a) (victim under thirteen), and was sentenced to seventy-one months' to fifteen years' imprisonment. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The complaining witnesses, who were eight and eleven years old at the time of trial but were approximately four years younger at the time of the alleged assaults, are daughters of defendant's former girlfriend. Defendant was ultimately charged with five counts of criminal sexual assault, but one was dismissed by the court, and the jury found him not guilty of three others.

On appeal, defendant argues that the evidence was insufficient to support the sole conviction entered against him, and that this Court should undertake general proportionality review of his sentence.

I. Sufficiency of the Evidence

When reviewing the sufficiency of evidence in a criminal case, a reviewing court must view the evidence of record in the light most favorable to the prosecution to determine whether a rational trier of fact could find that each element of the crime was proved beyond a reasonable doubt. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). Review is de novo. *Id.*

Defendant was convicted of count four which concerned the older of the two complaining witnesses. This count stemmed from allegations of inappropriate touching of that complainant.

The complainant testified that, when she lived with her mother and defendant on Beard Street in Detroit, she was taking a bath with her younger sister when defendant entered the room and shut the door behind him. According to the complainant, defendant "pushed my head underneath the water and started touching me . . . [o]n my vagina," with his hand." The complainant elaborated, "[h]e was touching all over it, feeling it and stuff," adding that he touched the inside of her vagina with "[p]robably two or three of his fingers". The complainant continued that defendant let her head up out of the water and "said if I tell anyone that he would come back and do something worse," which according to her testimony left her too frightened to speak of the event at the time.

This testimony supports the jury's verdict. The accounts of a single witness can suffice to persuade a jury of a defendant's guilt beyond a reasonable doubt. See *People v Jelks*, 33 Mich App 425, 432; 190 NW2d 291 (1971). Defendant points out that the witness was recounting events from years before, when she was quite young, and that her account did not perfectly match that of the younger sister who was supposedly also present. "[I]t is well settled that this Court may not attempt to resolve credibility questions anew." *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). Because the evidence, viewed in the light most favorable to the prosecution, could persuade a reasonable factfinder of defendant's guilt beyond a reasonable doubt, we reject defendant's challenge to the sufficiency of the evidence.

II. Sentencing

Defendant complains that the trial court imposed a sentence at the high end of the range recommended by the sentencing guidelines, which was thirty-six to seventy-one months' imprisonment. "If a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence." MCL 769.34(10).

In this case, defendant alleges neither inaccurate information nor erroneous scoring, but instead asks this Court to declare defendant's sentence disproportionate to the crime, relying in large part on outdated authorities. Defendant acknowledges the current statutory scheme, including the limitation on this Court's review recited above, only in the course of hinting at a constitutional challenge. But defendant's mere hint in not sufficient to prompt this Court to undertake searching constitutional review. See *People v Mackle*, 241 Mich App 583, 604 n 4; 617 NW2d 339 (2000); *People v Jones (On Rehearing)*, 201 Mich App 449, 456-457; 506 NW2d 542 (1993).

Defendant additionally complains that the trial court "was sentencing [defendant] with regard to her view of the offense," and reminds this Court that defendant was acquitted of three of the four charges that went to the jury. However, assuming without deciding that the trial court took into account allegations that did not result in convictions, no error occurred. "A sentencing court is allowed to consider the facts underlying uncharged offenses, pending charges, and acquittals." *People v Coulter*, 205 Mich App 453, 456; 517 NW2d 827 (1994). Further, the scoring of the guidelines need not be consistent with the verdict. See *People v Williams*, 191 Mich App 269, 276; 477 NW2d 877 (1991).

For these reasons, defendant's sentence, which falls within the guidelines range, warrants no further appellate scrutiny.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Jessica R. Cooper